

BEFORE THE
OFFICE OF ADMINISTRATIVE HEARINGS
STATE OF CALIFORNIA

In the Matter of:

ROXANA C.,

Claimant,

vs.

SOUTH CENTRAL LOS ANGELES
REGIONAL CENTER,

Service Agency.

OAH No. 2011060489

DECISION

Howard W. Cohen, Administrative Law Judge, Office of Administrative Hearings, State of California, heard this matter on August 15, 2011, in Los Angeles.

Roxana C.¹ (claimant) was present; she was represented by her father, Ricardo C., who utilized the services of an interpreter, Pamela Carreón.

Johanna Arias-Bhatia, Fair Hearing Manager, represented South Central Los Angeles Regional Center (Service Agency or SCLARC).

Oral and documentary evidence was received. The record was closed and the matter was submitted for decision on August 15, 2011.

ISSUE

Whether the Service Agency may terminate funding for claimant's independent living skills (ILS) services.

¹ Initials and family titles are used to protect the privacy of claimant and her family.

EVIDENCE RELIED UPON

Documents: Service Agency's exhibits 1-7.

Testimony: Roxanne Horta, SCLARC service coordinator; Saul Lopez, SCLARC program manager; Ricardo C., claimant's father.

FACTUAL FINDINGS

1. Claimant is a non-conserved 36-year-old woman, born on April 8, 1975, who is a consumer of SCLARC based on her qualifying diagnosis of mild mental retardation. Claimant lives at home with her parents and a brother; she also has two sisters.

2. Claimant receives Service Agency funding for 25 hours per month of ILS instruction provided by Solutions Plus. Claimant also previously received Service Agency funding for a supported employment program at the Lincoln Training Center and for transportation to and from the program. Claimant stopped attending the program due to a lack of employment opportunities. Claimant now stays at home and helps her family around the house. She does not currently wish to attend any employment programs, and has agreed to tell the Service Agency when she is interested in another program.

3. Roxanne Horta has served as claimant's service coordinator at the Service Agency since April or May 2008. Her report of an annual Individual Program Plan (IPP) review on April 21, 2010, attended by Ms. Horta, claimant, claimant's mother, claimant's ILS instructor, and an ILS supervisor, reflects that claimant successfully performs household chores and her personal care and hygiene tasks.

She enjoys being home and taking care of household responsibilities and helping her mother with cooking and cleaning. . . . She does not like going out on her own, and is still reluctant to taking [sic] public transportation. Educator takes [claimant] out to the community and is showing her the different bus routes, and helping her learn her way around.

(Ex. 5.)

4. The report of a recent triennial IPP review, conducted on April 25, 2011, reiterates that claimant possesses the skills delineated in the 2010 annual report—claimant performs personal care and independent living tasks, grooms and dresses herself, toilets independently, successfully performs household chores, does her own laundry, and cooks complete meals. The report also reflects that claimant

can indicate her personal information (i.e., DOB, age, address, phone #, etc.). She can read and write basic words and sentences

and has basic money management skills. She can count small amounts [of] money with few mistakes and she can manage minor purchases with little difficulty. She can tell time and is aware of the date and can read the calendar correctly.

(Ex. 4.) The report states that claimant can communicate well in Spanish and can hold a basic conversation in English. The report notes that claimant's ILS educator wishes to help her increase her independence and socialization skills, "as she does not enjoy going out or being in the community on her own. She is very dependent on her parents and needs to be around them most of the time. Her mother is very overprotective of her. [She] needs to learn how to cross the street independently." (*Id.*)

5. By a notice of proposed action (NOPA) letter dated May 17, 2011, the Service Agency notified claimant's parents that it would terminate funding the 25 hours per month of ILS service through Solutions Plus, effective in 30 days. The letter states that claimant is no longer eligible for ILS services because ILS training is a time-limited service not to exceed 24 months. Our records indicate that you have been receiving ILS services since 10/15/07.

ILS training consists of programs that assist individuals to develop skills that will enable them to live independently. You have reported to your assigned Service Coordinator that you do not intend to reside independently within the next six months. Therefore no need for continued funding of this service has been established.

(Ex. 1.) The letter suggested that claimant's parents apply for In Home Supportive Services (IHSS) and other generic resources to meet claimant's needs, citing Welfare and Institutions Code section 4659, subdivision (c),² for the proposition that regional centers may not purchase any service that is otherwise available from IHSS.

6. On May 22, 2011, claimant's parents submitted to SCLARC a Fair Hearing Request, appealing the termination of ILS.

7. Ms. Horta testified at hearing that, at the triennial IPP review, claimant informed her that she had no plans or intention to move out of the family home. The most recent report Ms. Horta has received from Solutions Plus was dated March 15, 2010, although such reports are supposed to be provided quarterly. The 2010 report reflects that claimant was working on goals relating to health, socialization, finding employment, money

² All further statutory references are to the Welfare and Institutions Code, unless otherwise stated.

management, and public transportation. (Ex. 7.) Ms. Horta testified that if claimant wanted to move out, her ILS goals should include finding an apartment and saving money for rent.

8. Saul Lopez, a former service coordinator for claimant and now the SCLARC program manager to whom Ms. Horta reports, testified that ILS is intended to train consumers in skills that will allow them to live independently; once a consumer is living independently, he or she may receive funding for supported living services (SLS). ILS is a transitional service and is not designed to continue indefinitely. Mr. Palma testified that claimant has achieved the skills necessary to make the transition to independent living, but she does not wish to leave home. Once claimant decides to live independently, Mr. Palma testified, she will qualify for SLS funding.

9. Claimant's father testified that ILS training has helped claimant learn many things, such as how to count money. But claimant cannot yet take a bus without help, and she must have someone take her to medical appointments. Claimant's father admitted that claimant does not want to move out of the family home. He testified that the family tries to protect her, that one means of protecting her is by having her participate in the ILS program, but that the family is claimant's best protection.

LEGAL CONCLUSIONS

1. The Lanterman Act governs this case. (§ 4500 et seq.) An administrative "fair hearing" to determine the rights and obligations of the parties is available under the Lanterman Act. (§§ 4700-4716.) Claimant requested a fair hearing to appeal the Service Agency's decision to terminate funding for ILS. Jurisdiction in this case was thus established. (Factual Findings 1-6.)

2. The party asserting a claim generally has the burden of proof in administrative proceedings. (See, e.g., *Hughes v. Board of Architectural Examiners* (1998) 17 Cal.4th 763, 789, fn. 9.) In this case, the Service Agency bears the burden of proving, by a preponderance of the evidence, that it is entitled to terminate funding for claimant's ILS services. (Evid. Code, § 115.)

3. The Lanterman Act is a comprehensive statutory scheme to provide "[a]n array of services and supports . . . which is sufficiently complete to meet the needs and choices of each person with developmental disabilities, regardless of age or degree of disability, and at each stage of life and to support their integration into the mainstream life of the community." (§ 4501.) The services and supports should "enable persons with developmental disabilities to approximate the pattern of everyday living available to people without disabilities of the same age." (*Id.*)

4. The services and supports to be provided to a consumer are determined in the IPP process on the basis of the needs and preferences of the consumer and a consideration of a range of service options proposed by the IPP participants, the effectiveness of each option

in meeting the goals stated in the IPP, and the cost-effectiveness of each option. (§ 4512, subd. (b).)

5. The Service Agency established by a preponderance of the evidence that it is entitled to terminate funding for claimant's ILS services. ILS services are intended to be time-limited, helping consumers to develop the skills necessary to live independently. Claimant has been receiving ILS training for nearly four years. Despite making progress in developing independent living skills, claimant has no wish to live independently, nor does she plan to live independently in the foreseeable future. She is content to continue to live with her family. (Factual Findings 1-9.) Based on her lack of desire to move out of the family home, the continued provision of ILS services is unnecessary at this time.

ORDER

Claimant's appeal is denied. SCLARC is not required to fund claimant's ILS services.

DATED: August 17, 2011

HOWARD W. COHEN
Administrative Law Judge
Office of Administrative Hearings

NOTICE

This is the final administrative decision; both parties are bound by this decision. Either party may appeal this decision to a court of competent jurisdiction within 90 days.